NO. 76-269

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

FRANKIE MAE R. JENNINGS,
Petitioner

v.

CADDO PARISH SCHOOL BOARD,
A Political Subdivision of the State of Louisiana
and
DONALD L. KENNEDY,
Individually And In His Official Capacity As Superintendent
Of Schools Of Caddo Parish School District,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LARRY WATTS
5620 Greenbriar, Suite 103
Houston, Texas 77005
713/526-0820
Attorney for Petitioner

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Frankie Mae R. Jennings, Petitioner herein, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered May 24, 1976, and for reason would respectfully show:

I.
Opinions Below

Opinions delivered in the Courts below in this case may be found at 531 F.2d 1331 (1976) (the decision of the United States Circuit Court of Appeals for the Fifth Circuit, unofficially reported) and 276 So.2d 386 (La. App. 1973) (the decision of the Court of Appeals for the Second Circuit, State of Louisiana, unofficially reported).

These opinions and those of the United States District Court for the Western District of Louisiana, Shreveport Division and of the First Judicial District Court of Caddo Parish, Louisiana are reprinted in the appendix attached hereto.

II.
Jurisdictional Grounds

A. Judgment in this case in the United States Circuit Court of Appeals for the Fifth Circuit was had and entered on May 24, 1976.

B. No rehearing in the Fifth Circuit was requested. No request for an extension of time in which to file a petition for certiorari has been requested.

C. This Court has jurisdiction to review judgment of the Court below under 28 U.S.C., Section 1254 (1).

III.
Question Presented

The question presented for review herein is: Whether the appeal of the decision of the Caddo Parish School Board to the First Judicial District Court of Caddo Parish and subsequent appeal to the Court of Appeals Second Circuit was, in fact, the completion of Appellant's exhaustion of administrative remedies.

IV.
Statutory Provision Involved

The state statute pertinent herein is: L.S.A. — R.S. 17:443, which states:

> Removal of teachers; procedure; right to appeal
>
> A permanent teacher shall not be removed from office except upon written and signed charges of wilful neglect of duty, or incompetency or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, or of advocating or in any manner performing any act toward bringing about integration of the races within the public school system or any public institution of higher learning of the state of Louisiana, and then only if found guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with a copy of the written charges. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at the said hearing. Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction.
>
> If a permanent teacher is found guilty by a school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, or of advocating or in any manner performing any act toward bringing about integration of the races within

the public school system of the state of Louisiana, and ordered removed from office, or disciplined by the board, the teacher may, not more than one year from the date of the said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he or she may have sustained by reason of the action of the said school board. As amended Acts 1956, No. 249, Section 1.

V.

Facts

Appellant, Frankie Mae R. Jennings, is a black woman, who was employed by Appellee district as a school teacher. She was employed in the following capacities: [1948-49 at another school district, teaching fifth grade]; 1949-1950, Grades 1-7 at Goose Island School of Caddo Parish; 1950-1951 and 1951-1952, Grades 1, 2, 3 at Fairview School of Caddo Parish; 1952-1953 thru 1954-1955, Grades 1, 2, 3 at Mt. Pleasant School of Caddo Parish; 1955-1956 thru February 9, 1970, Grade 3 at Mooretown Elementary of Caddo Parish; February 11, 1970 thru March 18, 1970, Grade 5 at Sunset Acres of Caddo Parish.

Over the years she has kept up with developments and new techniques in teaching. After receiving her B.S. from Wiley College in 1948 and subsequent certifications to teach in Texas and Louisiana, she received her M. Ed. degree from Prairieview A & M College in 1965. In the

1960's, she continued her education by receiving instruction in the following areas of teaching: language arts - 9 hours; programmed instruction - 12 hours; art - 13 hours; economics - 18 hours; modern math - 18 hours; reading conference attended.

During the years of her employment 1949-1950 thru February 9, 1970, Appellant taught at all-black schools, with 12 years spent on the third grade level. Until the present case, her performance had been more than adequate and her record was unblemished. Caddo Parish was satisfied with her and presumably felt she was qualified.

During her last year at Mooretown Elementary, a new program was instituted in which she was assigned to teach art and music exclusively. Because she did not feel qualified to teach music, she requested to teach in a traditionally-run class, and such was allowed for her and for other teachers. Due to personality conflicts resulting from this, she requested a transfer to third grade at another black school in the district. Rather than grant this request, the school district transferred her to Sunset Acres Elementary School, which was predominantly white. The record does not reflect a reason for the denial of her request to be sent to another black school. Upon transfer to the predominantly white school, she was assigned to teach the fifth grade level. No real reason for the change in grade levels was shown. Indeed, the school district's stated policy for method of transfer during court-ordered desegregation included that each teacher would remain in the same department. Third and fourth grades were one department and fifth and sixth grades another. The only reason proposed for violating its own policy by assigning Ms. Jennings to a new department was her original request

made when she was hired by Caddo Parish, 18 years previously, requesting fifth grade. All subsequent requests, including the current one for third grade, were ignored. Being in strange surroundings and in a new department, teaching in a grade she had not taught in eighteen years, Ms. Jennings understandably experienced some difficulties.

A major problem encountered was the turbulent racial period through which the school system was then progressing. It must be noted that the period in controversy occurred during 1970, and was the first of the anti-segregation waves to be felt in this community. Federal desegregation guidelines were imposed upon the Caddo School Board and it is an understatement to say that resentment and hard feelings were prevalent. It was during this period, when the community was both hostile and vocal, that Appellant was sent to teach in her first white school.

Other problems also faced Ms. Jennings. For example, not only was she teaching a new and unfamiliar grade, but she also had to teach out of a series of books which had never been used in the black schools where she had previously taught. That the system used was one to which she was unaccustomed made lesson preparation difficult. Since she was reassigned during the middle of a semester, the unfamiliarity she had with the faculty and new principal made for less than comfortable working conditions. When needed advice was sought, she did not know to whom to turn or whether any advice received was, indeed, reliable. In an effort to do well, she turned to friends and associates from past years in order to gain insight into her new teaching position.

Ms. Jennings experienced difficulties from the beginning of her experience at the white school. Discipline was more difficult than normal, because of the new surroundings, the fact that the children were older and that she began teaching in the middle of the semester. To compound the unavoidable problems, a white teacher told several white students to disrupt her class when possible. Her classroom was continually visited by supervisors; the principal even hid outside her window in order to eavesdrop on her lectures. The situation snowballed.

On March 18, 1970, after only nineteen school days, charges of incompetence were filed with the Caddo Parish School Board by D. L. Kennedy, Superintendent of said school district. A formal hearing on the charge was had before the Caddo Parish School Board on April 28, 1970. By a decision of the school board Appellant was dismissed as a classroom teacher. A timely appeal, pursuant to R.S. 17:443, was taken to the First Judicial District Court sitting as an appellate court in accordance with the mentioned statute. No trial *de novo* is allowed under R.S. 17:443, so the First Judicial District Court handed down a decision based on the record of the hearing had before the Caddo Parish School Board, finding that "the determination of the Caddo Parish School Board was supported by substantial evidence." An appeal was taken to the state's Second Circuit Court of Appeals which also held that the school board's decision would not be interfered with because it had met the substantial evidence test. Ms. Jennings then took her cause of action to federal court to seek relief for the deprivation of her federally-created rights, the disposition of which was not made in the State courts.

VI.

Federal Jurisdiction

The basis for federal jurisdiction in the United States District Court is:

A. 42 U.S.C., Section 1983;

B. The Fourteenth Amendment to the Constitution of the United States;

C. 28 U.S.C., Section 1343, 2201 and 2202.

VII.

Argument

The federal constitutional claims presented by Petitioner Jennings have not been fully litigated and decided in the State courts of Louisiana. She, therefore, has standing to seek relief in the federal courts. The actions in the State courts were measures taken to exhaust administrative remedies, were conducted under administrative standards and do not constitute a trial *de novo.*

Petitioner appealed her case from the school board to the state district court under the provisions of L.R.S. - R.S. 17:443 which states, "the teacher may petition a court of competent jurisdiction for a full hearing to review the action of the school board." What she received by such petition was an appeal, a review of the school board's actions in which the standard of proof used was "substantial evidence," not the standard of preponderance of the evidence.

The substantial evidence rule is the one which is properly used at administrative hearings. *National Labor Relations Board v. Hudson Motor Car Co.,* 128 F.2d 528 (6th Cir. 1942). However, in civil actions, an issue of fact is not regarded as proven until the party bearing the burden of proof has produced a preponderance of the evidence. 32A C.J.S. Evidence, Section 1019 (1964). A trial *de novo* in state district court would be conducted under the preponderance standard. But, the review by the district court in this case was conducted under the substantial evidence standard. Bolin, J., stated in the district court opinion:

> . . . this Court finds that there was a rational basis for the determination by the Caddo Parish School Board which was supported by substantial evidence.

The use of the substantial evidence rule in this court was correct because the proceeding was a review, an appeal from the ruling of the Respondent school board. As such, that court only needed to determine whether there was substantial evidence for the ruling of the school board, which it held there was. It did not conduct a trial on the merits but simply considered the evidence presented at the board hearing, in the manner presented there. This consideration involved no new evidence or argument; it was merely a review of that which transpired at the hearing, where Ms. Jennings was not provided with help available in court, such as proof by preponderance or subpoena power. Were it a trial *de novo,* the preponderance of the evidence rule would have been imposed and all the safeguards and helps of court would have been available. Instead, these did not apply. The School Board members tested their own prior ruling against the substantial evidence rule and found, not surprisingly, that they had measured up to that small standard. There was no trial

de novo, conducted on the proper standards, with the proper safeguards; there were only appeals from the board's decision, conducted in state courts.

That there was no trial *de novo* is the position of the Louisiana courts, as is noted in *Campo v. East Baton Rouge Parish School Board,* 231 So.2d 67 (La. App. 1970). In that case, which was similar to the one at bar, the Louisiana Court of Appeals cited L.S.A. - R.S. 17: 443 and commented upon it, saying:

> This provides not for a trial for removal but for a review of the action by the school board. In other words, the District Court in this particular case acts as an appellate court in that it reviews the action of the school board. 231 So.2d at 71.

See also *Mims v. West Baton Rouge Parish School Board,* 315 So.2d 349, 352 (La. App. 1975). A further example of the limited nature of review on appeal under R.S. 17:443 by the courts can be seen in *Simon v. Jefferson Davis Parish School Board,* 289 So.2d 511, 517 (La. App.):

> . . . that when there is a rational basis for an administrative board's discretionary determinations which are supported by substantial evidence insofar as factually required, the court has no right to substitute its judgment for the administrative board's or to interfere with the latter's bona fide exercise of its discretion. *Lewing v. DeSoto Parish School Board,* 238 La. 43, 133 S.2d 462 (1959); *State ex rel. Rathe v. Jefferson Parish School Board,* 206 La. 317, 19 So.2d 153 (1943); *Celestine v. LaFayette Parish School Board,* supra. With this in mind, we conclude that the above conclusions were based upon substantial evidence.

Via R.S. 17:443, it was the intent of the legislature to give the state courts administrative review of the acts of an administrative body, the school board. This is a permissible and accepted delegation. 2 Am. Jur. Administrative Law Section 568.

It is because of this delegation of power by the legislature that the courts are endowed with authority to take administrative actions, a course usually contrary to separation of powers. 73 C.J.S. Public Administrative Bodies and Procedure, Section 37 (1964). The determination of whether a particular action of a court is to be deemed strictly judicial or whether it is an administrative action taken under the limited license of the legislature is determined on an individual basis.

> It is not easy to lay down a general rule by which it may always be determined what acts are judicial and what acts are ministerial; but it is safe to say that whether a duty imposed is judicial or ministerial is to be *determined by the nature of that duty,* and not by the tribunal or person that is to discharge it, and in determining whether or not an act is ministerial it must be remember that *a duty on the part of the court to ascertain a fact from the evidence does not per se render the duty judicial.* 4 C.J.S. Appeal and Error Section 9 (1964); cited as a correct statement of the law in *Common School District,* 71 Idaho 486, 233 P.2d 806, 809 (emphasis added).

Thus, the action of the state district court in reviewing the board's decision was not necessarily a judicial action. To determine its nature one must look to the particular duty being discharged. The court was reviewing the actions of an administrative agency. It accepted no new evidence, did not conduct a trial *de novo.* It utilized the substantial

evidence rule of administrative proceedings rather than the preponderance of the evidence rule of civil suits. It was performing a closely defined administrative action as specifically authorized by the state legislature.

The district court's action was, then, in a permissible administrative capacity and was an appeal in continuance of the redress of grievances begun in the school board hearing. It was an attempt by Ms. Jennings to exhaust all administrative-type remedies before seeking a judicial decision from the court.

The appeal from the state district court to the state court of appeals was of the nature as that appeal conducted at the district level. The jurisdiction of an appellate court in reviewing a lower court is confined to a review of the errors of the lower court. 4 C.J.S. Appeal & Error Section 39 (1964). "An appeal is not a trial but simply a method given litigants of rectifying errors, legal or factual, that may have occurred at a proceeding hearing generally referred to as a trial." *Sanborn v. Pacific Mutual Life Ins. Co.*, 108 P.2d 458, 461, 42 C.A. 2d 99. The action in the appeals court was, therefore, the same type action as in district court and was part of complainant's exhaustion of administrative remedies; it was simply an ascertainment of whether or not the decision in the hearing given Ms. Jennings before the school board was based on substantial evidence.

The fact that complainant brought this suit in federal court before termination of the action in state court does not bar her action under the rule that she must exhaust all administrative remedies before turning to the courts for judicial action. Such rule is not applicable in Section 1983 proceedings. ". . . [I]t is no longer arguable that

exhaustion of State remedies is a requirement of a party seeking relief under the Federal civil rights statutes." *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); *McNeese v. Board of Education*, 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed.3d 622 (1963); *Damico v. California*, 389 U.S. 614, 88 S.Ct. 526, 19 L.Ed.2d 647 (1967); *Sparks v. Griffin*, 460 F.2d 433 (5th Cir. 1972). The filing of this federal action is unrelated to and not dependent upon exhaustion of state administrative remedies.

The decision of the Louisiana appeals court purports to rule on her federal constitutional claims. See Slip Opinion, p. 4. Yet, all it had before it were facts found before an administrative tribunal, which facts were not subjected to the scrutiny required in federal court. Any decision based on facts that have not been shown to meet the proper test cannot be allowed to determine a citizen's federal rights. Each potential litigant deserves his day in court, complete with the attendant safeguards from abuse. The standard of preponderance of the evidence was developed to insure that litigants properly prove their claims, that justice may be done. Respondent School Board has not properly proven its case, because its evidence has not been tested by the proper standard, and no justice has been had. Its disposition of the case cannot, therefore, be allowed to stand and dispose of Ms. Jennings' constitutional claims.

CONCLUSION

Petitioner would show that for the reasons given hereinabove, a writ of certiorari should issue to review the judgment and opinion of the court below, and that upon hearing of this cause, the decisions of the courts below

be reversed and this cause reinstated for trial on the merits; in the alternative, Petitioner would show that judgment should be rendered for Petitioner and against Respondent, and that this Court should remand the matter to the trial court for determination of the appropriate relief under said rendered judgment.

Respectfully submitted,

LARRY WATTS
5620 Greenbriar, Suite 103
Houston, Texas 77005
713/526-0820
Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument was mailed, pursuant to Supreme Court rules 21(3), 34(3)(b), this ____ day of August, 1976, certified, return receipt requested, postage prepaid to:

John R. Pleasant
1004 Mid South Towers
P.O. Drawer 1092
Shreveport, Louisiana 71163
ATTORNEY FOR RESPONDENT

LARRY WATTS

APPENDIX A

FRANKIE MAE R. JENNINGS

vs.

CADDO PARISH SCHOOL BOARD

NO. 201,169

FIRST JUDICIAL DISTRICT COURT

CADDO PARISH, LOUISIANA

J U D G M E N T

This cause having been regularly set for trial, evidence adduced, and the case submitted on briefs filed, the law and the evidence being in favor thereof, for the reasons assigned in a written opinion filed:

IT IS ORDERED, ADJUDGED AND DECREED that the action of the Caddo Parish School Board in dismissing the plaintiff, Frankie Mae R. Jennings, as a permanent teacher be confirmed and that there be judgment herein rejecting the demands of the plaintiff, at her costs.

JUDGMENT RENDERED on the 31st day of July, 1972.

JUDGMENT SIGNED on this 8th day of August, 1972.

/s/ C. J. BOLIN, JR.
District Judge

APPENDIX B

FRANKIE MAE R. JENNINGS

versus

CADDO PARISH SCHOOL BOARD

NO. 201,169

FIRST JUDICIAL DISTRICT COURT

CADDO PARISH, LOUISIANA

OPINION

Plaintiff, a tenure teacher possessing certification for grades one through eight, was dismissed by the Caddo Parish School Board after a full hearing before said Board. She has appealed to this Court for a review of the actions of the Board as provided by La. R. S. 17:443.

This Court has carefully studied the charges against plaintiff as specified in the letter of the superintendent dated March 13, 1970, with the attachments thereto numbered #1 through #12, and the transcript of the hearing before the Board.

Specification No. 2 is that "Mrs. Jennings is not capable of organizing and carrying on a constructive educational program", and one reason specified was that her room stays in a chaotic condition.

Dr. Katye Lee Posey, Director of Elementary Education testified that discipline is part of teaching and a teacher can't teach without discipline (See test. p. 112, ln. 12).

The testimony of James E. McGuffin, Dr. Katye Lee Posey, and Superintendent Donald L. Kennedy, all testified to chaotic conditions in the plaintiff's classroom at Sunset Elementary School. The person in the best position to observe conditions there was the teacher in the next room, George Killen. He testified that the noise was such that it made hearing difficult in his own classroom (test. pgs. 48-49, ln. 19). Considering the above testimony, there was substantial evidence for the determination that the classroom remained in a chaotic condition.

Another reason specified by the Board was that plaintiff lacks the knowledge of ordinary English grammar to instruct fifth grade children. Dr. Earl McKenzie testified that while he observed her class, she used the illustration "I seen a bird" (test. pgs. 132-133). This testimony is substantial evidence that substantiates the above charge. In addition, the testimony of plaintiff before the Board discloses the following grammatical errors: "looked like using psychiatry was planned that I get this deal—" (test. p. 293, ln. 2); "you must have didn't do anything about that" (test. p. 297, ln. 13); "alphatize" (test. p. 317, ln. 23), and "I was treated unjustice" (test. p. 337, ln. 15).

For the above reasons, this Court finds that there was a rational basis for the determination by the Caddo Parish School Board which was supported by substantial evidence.

The demands of the plaintiff are rejected.

July 31, 1972.

/s/ C. J. BOLIN, JR.
C. J. Bolin, Jr., District Judge

APPENDIX C

NO. 12,048

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

FRANKIE MAE R. JENNINGS, Plaintiff-Appellant

vs.

CADDO PARISH SCHOOL BOARD,
Defendant-Appellee

Appealed from the First Judicial District Court
for the Parish of Caddo, State of Louisiana;
Honorable C. J. Bolin, Jr., Judge

Lunn, Irion, Switzer, Johnson & Salley By: Charles W. Salley	Attorneys for Appellant, Frankine Mae R. Jennings
Booth, Lockard, Jack, Pleasant & LeSage By: John R. Pleasant	Attorneys for Appellee, Caddo Parish School Board

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BEFORE AYRES, PRICE, HEARD, JJ

By Heard, J.

Frankie Mae Reeves Jennings appeals from a judgment of the district court affirming her dismissal by the Caddo Parish School Board as a teacher in the Caddo Parish School system.

On March 13, 1970, Donald Kennedy, Superintendent of Schools, filed formal charges of incompetency, alleging (1) she could not adapt to current instructional procedures and (2) she was incapable of organizing and carrying on a constructive instructional program, her class remained in a chaotic condition, and lack of knowledge of ordinary English grammar.

Pursuant to LSA-R.S. 17:443, the school board accepted the charges and a hearing was held on April 28, 1970. The hearing was private at Mrs. Jennings' request, and she was represented by counsel. The board found her incompetent and dismissed her from her position as a permanent teacher. On March 8, 1971, Mrs. Jennings petitioned the district court to review the board's action. After reviewing the charges and transcript of hearing, the district court affirmed the dismissal, finding a rational basis for the board's determination supported by substantial evidence.

Mrs. Jennings had been an elementary school teacher in Caddo Parish school system since 1949, holding an elementary certificate qualifying her to teach grades 1 - 8. In February, 1970, she was transferred from an all black school, Mooretown Elementary, where she had taught the third grade for many years, to a predominately white school, Sunset Acres Elementary, to teach the fifth grade, in compliance with a federal court order integrating public

school faculties. The charges were brought soon after she began her new duties there.

After reviewing the charges and evidence presented, we conclude, as did the district court, that the board's decision was correct and fully supported by the evidence.

An inability to adapt to current instructional procedures was apparent prior to her transfer to Sunset Acres. She was discontented with plans to departmentalize the third grade at Mooretown and asked for a transfer. After talking to school board personnel and Mrs. Jamison, the principal, however, she remained at Mooretown and was allowed to teach in a self-contained classroom while the revised program was conducted by the other teachers. Later when Mrs. Jamison asked the teachers to pair the teaching, Mrs. Jennings did not like it and again asked for a transfer which led to her reassignment to Sunset Acres School. These instances, documented by Mrs. Jamison's daily notes and a letter from Mr. Harry L. Miley, Director of Personnel, demonstrate plaintiff's unwillingness to change with the times and try new methods to improve the educational process.

The most serious of the charges, however, is that she is not capable of organizing and carrying on a constructive educational program. One reason specified is that her room stayed in a chaotic condition. The evidence presented in support of this contention is overwhelming. The testimony of the supervisory personnel who observed her classes, and parents visiting her room at Sunset Acres, clearly shows she had no control over the children. They created disturbances in her room as well as made teaching and learning difficult in adjoining rooms as testified to by the teacher in the next room. Such a chaotic atmosphere

is not conducive to education. As stated by Dr. Katye Posey, Director of Elementary Education, a teacher cannot teach without discipline. Plaintiff did not refute some of these charges but made a vague unsupported reference to a white teacher who allegedly told the children to make noise in her room. Even if true, it seems that proper discipline would have overcome the alleged interference.

The second specification under this charge is that Mrs. Jennings lacks sufficient knowledge of ordinary English grammar. The record amply supports this charge. In addition, Mrs. Jamison's notes reveal Mrs. Jennings was misspelling and mispronouncing words while she taught at Mooretown.

Mr. Kennedy, Dr. McKenzie and Dr. Posey were of the opinion Mrs. Jennings was incompetent based on observations and reports from her superiors. The board and lower court correctly accepted their opinions.

Plaintiff complains she was deprived of her position without due process of law and alleges racial bias is behind her dismissal. In our opinion these contentions are without merit. The process which removed her from her teaching position was in full compliance with the statute and all of her constitutional rights were fully protected. She was represented by able counsel at a private hearing which she requested. She was allowed to cross-examine witnesses and present witnesses and evidence on her own behalf. She exercised her right to a judicial review. We find nothing unfair about the proceedings of the board or of the court below. Any hint of racial prejudice is inconsistent with the facts. Plaintiff had problems teaching in an all black school prior to her transfer to a white school. There is nothing to indicate anything racial in

the appearance of parents at the hearing as they had other children being taught by other black teachers without complaints.

We find there was a rational basis for the school board's discretionary determination supported by substantial evidence insofar as factually required and therefore we will neither substitute our judgment for the board nor interfere with its bona fide exercise of discretion. Lewing v. DeSoto Parish School Board, 238 La. 43, 113 So. 2d 462 (1959).

The judgment appealed from is hereby affirmed at plaintiff's cost.

APPENDIX D

MINUTE ENTRY
SEPTEMBER , 1975
STAGG, J.

CIVIL ACTION NO. 18,281

FRANKIE M.R. JENNINGS

versus

CADDO PARISH SCHOOL BOARD, ET AL

* * *

This suit arises from the dismissal of plaintiff, a black, as a classroom teacher in the public school system of Caddo Parish. Plaintiff alleges that her dismissal was due to her race, in violation of the provisions of 42 U.S.C. Section 1983, and that the manner in which she was dismissed deprived her of procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution.

From the record, it appears that plaintiff's claims have been fully and fairly litigated in the state courts of Louisiana pursuant to the provisions of the Louisiana Teacher Tenure Law. La. R.S. 17:443. This being so, the present action may not be maintained as this Court lacks jurisdiction. *Frazier v. East Baton Rouge Parish School Board,* 363 F.2d 861 (5th Cir. 1966); *Garner v. Louisiana State Board of Education,* 489 F.2d 91 (5th Cir. 1974).

Accordingly, the plaintiff's complaint is hereby DISMISSED, *sua sponte,* for lack of federal jurisdiction.

/s/ TOM STAGG

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION

NO. 18,281-S

FRANKIE MAE R. JENNINGS

vs.

CADDO PARISH SCHOOL BOARD, ET AL

JUDGMENT

This cause having been submitted on defendants' motion to dismiss, the law and the evidence being in favor thereof, for the reasons assigned in a written opinion dated September 16, 1975:

IT IS ORDERED, ADJUDGED AND DECREED that the motion to dismiss for lack of jurisdiction is sustained and therefore the plaintiff's suit is dismissed at her cost.

JUDGMENT RENDERED on the 16th day of September, 1975.

JUDGMENT SIGNED in Chambers on the 29th day of September, 1975.

/s/ TOM STAGG
United States District Judge
Western District of Louisiana

APPENDIX F

Frankie Mae R. JENNINGS,
Plaintiff-Appellant,

v.

CADDO PARISH SCHOOL BOARD et al.,
Defendants-Appellees.

No. 75-3951

Summary Calendar.*

UNITED STATES COURT OF APPEALS,
Fifth Circuit.

May 24, 1976.

Appeal from the United States District Court for the Western District of Louisiana.

Before BROWN, Chief Judge, GEWIN and MORGAN, Circuit Judges.

PER CURIAM:

After a full hearing at which the appellant appeared with counsel, the Caddo Parish School Board unanimously resolved that she be dismissed as a classroom teacher. Thereafter appellant petitioned the First Judicial District Court, Caddo Parish, Louisiana for a review of the action of the school board. The District Court rejected the appellant's claims. On appeal to the Second Circuit Court

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* Rule 18, 5 Cir., see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

of Appeals for the State of Louisiana the decision was affirmed. *Jennings v. Caddo Parish School Board,* La. App., 276 So.2d 386 (1973). Appellant has attempted to renew this litigation in federal court, alleging that her discharge was the product of racial discrimination in violation of 42 U.S.C. § 1983. The district court properly dismissed the suit. Under the doctrine of res judicata, the prior judgment of the state court is conclusive as to all matters which were litigated or might have been litigated therein and bars a subsequent decision by the federal courts. *Garner v. Louisiana State Board of Education,* 489 F.2d 91 (5th Cir. 1974), *cert. denied,* 419 U.S. 830, 95 S.Ct. 53, 42 L.Ed.2d 55 (1974); *Frazier v. East Baton Rouge Parish School Board,* 363 F.2d 861 (5th Cir. 1966).

Appellant's contention that L.S.A. R.S. 17:443[1] limits judicial review of the administrative dismissal proceeding to a determination of the sufficiency of the evidence at the school board hearing is belied by the fact that appellant's amended complaint in the First Judicial District Court, Caddo Parish, Louisiana, also asserted that her dismissal was racially motivated and that the school board hearing which she received violated her due process rights. The Second Circuit Court of Appeals for the State of Louisiana affirmed the lower state court's denial of these claims *on the merits.*[2] Thus, the constitutional issues

1. L.S.A. R.S. 17:443 reads in relevant part:
"If a permanent teacher is found guilty by a school board, after due and legal hearing as provided herein, on charges . . . of incompetency . . . the teacher may, not more than one year from the date of said findings, petition a court of competent jurisdiction for a full hearing to review the action of the school board . . . ."

2. It stated:
Plaintiff complains she was deprived of her position without due process of law and alleges racial bias is behind her dismissal. In our opinion these contentions are without merit. The process which removed her from her teaching position was in full compliance with the statute and all of her constitutional rights were fully protected. She was represented by able counsel at a private hearing which she requested. She was allowed to cross-examine witnesses and present witnesses and evidence on her own behalf. She exercised her right to a judicial review. We find nothing unfair about the proceedings of the board or of the court below. Any hint of racial prejudice is inconsistent with the facts. Plaintiff had problems teaching in an all black school prior to her transfer to a white school. There is nothing to indicate anything racial in the appearance of parents at the hearing as they had other children being taught by other black teachers without complaints.
Jennings v. Caddo Parish School Board, La. App., 1973, 276 So.2d 386, 388.

which underlie appellant's § 1983 claim which appellant now seeks to raise in federal court have already been litigated in a court of competent jurisdiction, and whether diagnosed as an application of res judicata or collateral estoppel, we are barred from reconsidering them. *See Brown v. Chastain,* 5 Cir., 1969, 416 F.2d 1012.

Appellant argues that she was forced to bring her constitutional claims in state court rather than proceed directly to federal court in order to avoid sacrificing judicial review of the school board's action pursuant to L.S.A. R.S. 17:443. Under *England v. Louisiana State Board of Medical Examiners,* 1964, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440, however, had appellant wished to reserve her constitutional claims for subsequent litigation in federal court, she could have done so by making on the state record a reservation to the disposition of the entire case by the state courts. *Id.* at 421-22, 84 S.Ct. at 467-468, 11 L.Ed.2d at 448-49. Appellant expressed no such reservation in state court.

AFFIRMED.